

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8489 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

-----  
SHANTARAM SUKARIYA CHORIYA

Versus

STATE OF GUJARAT

-----  
Appearance:

MR JAYANT PATEL for Petitioners  
Mr.M.R.Anand,G.P.with Mr.Kamal Mehta,A.G.P.  
for the respondents.

-----  
CORAM : MR.JUSTICE N.J.PANDYA and  
MR.JUSTICE S.D.PANDIT

Date of decision: 10/09/96

ORAL JUDGEMENT

( Per S.D.Pandit,J)

1. Shantaram Sukariya Choriya and 4 others have filed the present petition to challenge the notification u/S.4 and u/S.6 respectively on 8-11-1985 and 27-5-1986 by the respondents in respect of the lands belonging to

the present petitioners of village Gadad of Dang District which are being acquired for the purpose of establishing a Potato Research farm.

2. The petitioners have filed the present petition on 20-12-1986. It is the contention of the petitioners that the notification u/S.6 was prepared by the Collector on 18th March, 1986. The Government had taken a decision and prepared the said notification on 27th May, 1986, but the Collector had published the substance of the said notification in the village on 20th March, 1986 and the said notification were published in the local Newspaper on subsequent dates, and, therefore, the said notification is illegal and invalid. It is their further contention that adjoining their land in question, there is a land available to the Government and the said land is hardly at a distance of 400 to 500 feet from the land in question, and, therefore, the Government ought not to have proceeded with the acquisition of land in question. The petitioners have also contended that the petitioners are poor agriculturists and they are small land holders and if their lands are acquired, they will be left to the starvation position. Therefore, on these grounds, the petitioners are seeking the quashing of the said notification.

3. The claim of the petitioners is resisted by the respondents by filing counter affidavit. In the counter affidavit, it has been contended that the notifications in questions were published and thereafter, the award in this case has been also declared on 4-8-1988 and consequently the petition which is filed after a period of more than two years ought not to be entertained. It is also contended that no prejudice is caused to any of the petitioners by the alleged irregularity in the publication of the notice. It is also denied that the petitioner would be left to the position of starvation and it is contended that even after the acquisition in question, the petitioners would be left with other lands for their cultivation. Therefore, in these circumstances, the present petition should be rejected.

4. The present petition is filed by the petitioners on 20-12-1988. The award in respect of the land in question was passed on 4-8-1988. The petitioners have thus come before the court after more than 2 years from the date of the publication of the notification under Section 6 of the Land Acquisition Act. No doubt, the petitioners have averred in petition at page No.6 that they had filed their objections after the receipt of notification under Section 4(1) and thereafter they have

not received any intimation and they got notice on 18-11-1988 to receive the compensation, thereupon they came to know of passing of the award on 4-8-1988. But if the document produced by the respondents and particularly the Panchnama at Annexure 'B' produced alongwith the reply filed by the respondents are considered, then it would quite clear that the contention of the petitioners that they had no intimation after they had filed objections is not correct. It has been specifically contended that their objections were dealt with, and, thereafter, the further notification was published and the record shows that the notification under Section 6 was published to the knowledge of the present petitioners. Therefore there is no proper explanation regarding the delay in filing this petition. The petitioners have come before the court after more than 2 years after the said notification under section 6 is issued and after the notification under S.9 is issued and after the award is made. Therefore, on the ground of delay their claim could not be considered. In the cases of AFALATOON Vs. LT. GOVERNOR OF DELHI A.I.R.1974 SC,2077, BABU SINGH Vs.UNION OF INDIA A.I.R.1979 S.C.1713 and VISHWAS NAGAR EVACUEE PLOT PURCHASERS ASSOCIATION VS. UNDER SECRETARY, DELHI ADMINISTRATION AND ANOTHER, A.I.R. S.C.849 the Supreme Court has refused to consider the challenge to the notifications under Sections 4 and 6 on the ground that they were behind and delayed. We are also of the opinion that the petitioners' claim is hit by delay.

5. The contention of the petitioner is that the Collector had published the substance of the notification under Section 6 on 20-3-1986 though the notification under Section 6 was published in " Gujarat Samachar" on 18th June 1986. As regard this claim of these petitioners, there is no specific denial in the reply filed by the respondent, but if the pleading of the petitioner in para 4.4 A is taken into consideration, then it would be quite clear that the Collector had prepared the notification under Section 6 on 18-3-1996 and he had forwarded the same to the Government. It seems that the Collector was under the impression that a notification prepared by him and forwarded to the State Government would be immediately published by the State Government. Therefore, on that assumption it seems that he had the publication of the substance of the notification on 20-3-1986 and for the purpose also prepared the panchnama which is at annexure 'B' with the reply, at page 29. There is no material to show that by the said publication of the substance of the notification, any prejudice is caused to any of the

petitioners. No doubt, the publication of the said substance of the notification is an irregularity, but when the said irregularity has not resulted in injustice or prejudice to any party, it cannot be said to have become illegality. In the case of Babu Singh and Others V. Union of India A.I.R. 1979 (Supreme Court) p.1713 the Appex Court has held that the issuance of notification under Sections 4 and 6 simultaneously would not amount to any illegality. If the said decision of Supreme Court is taken into consideration and when there is no material on record to show that any prejudice was caused to the petitioners, the publication of the substance by the Collector before the actual publication of notification under Section 6 could not amount to any illegality.

6. At this juncture, the learned advocate for the petitioner has cited before us the case of the Collector, Allahabad and Another V. Raja Ram Jaiswal reported in A.I.R.1985,S.C.1622. In this case Their Lordship have considered the publication of notification under Section 4 in the locality and substance of the notification being published in the official gazette and has held that both requirements are mandatory. In the case before us, there is a publication of notification under Section 4 and the publication of notification under Section 6 is not at all seriously challenged and disputed by alleging any illegality or irregularity in publishing the notification under Section 6. We have already considered the aforesaid dispute regarding the publication of the substance of the notice by the Collector in local area and we have come to a conclusion that in the publication of the substance of notification in the locality by the Collector on 20-3-1986 has resulted into an irregularity and from the material on record, we are unable to hold that by committing the irregularity in making publication of the said substance of the notification by the Collector on 20-3-1986 as a matter of fact the notification was not gazetted on that date, no prejudice is caused to the petitioners, the said irregularity could not have been said to have resulted in illegality and in the case of BABU SINGH AND OTHERS VS. UNION OF INDIA, A.I.R.1979, Supreme Court, 1713 the publication of the notification under Section 4 and Section 6 simultaneously has been upheld by the Supreme Court. Therefore, in view of the said decision of the Supreme Court, we are of the view that the publication of the substance of notification by the Collector in the case before us, is merely an irregularity and consequently we are unable to hold that the whole publication of the notification under Section 6 is

illegal and invalid. Thus, in our humble opinion, in view of the decision by Supreme Court reported in A.I.R. 1979 S.C.1713 and the peculiar facts of the case before us namely that prejudice is shown by the petitioners by the act in question and that the petitioners have not challenged the notification under Section 4 as well as under Section 9 and that the award has been also published prior to the date of the petition, we hold that the irregularity committed by the Collector in publishing the substance of the notification under Section 6 will not result in quashing of the same.

7. The other contention raised by the petitioners is as regards to existence of another land at a distance of 400 to 500 feet from the land in question. It must be remembered that the land in question is being acquired by the Government for a Potato Research Farm. It is very pertinent to note that it is not specifically contended by the petitioner that the land which is at a distance of 400 to 500 feet is of the same quality and it is also equally useful for establishment of the said Potato Research Farm. On the contrary petitioners state in para 3.2 of their petition that it is a waste land. When the Government has decided to acquire the land for the purpose of setting up the Potato Research Farm, merely because there happen to be waste follow land belonging to the Government at a distance of 400 to 500 feet, it cannot be said, that the acquisition in question is malafide one.

8. The last contention raised by the petitioners is that on account of the acquisition of the land in question, the petitioners and their family would be left to the starvation position. Here also it must be mentioned that the petitioners have not specifically stated in their petition as what is the total holding of each the petitioner. They have also not stated that out of holding of each petitioner, what land is being acquired. The respondents have specifically contended in their affidavit in reply that even after the acquisition in question, the petitioner would be left with their own land for their self-cultivation. Now in view of the specific stand taken by the Resident Deputy Collector, Ahwa (Dangs) in his affidavit in para No.4 the contention of the petitioners that the petitioners would be left to starvation position by the acquisition of the land in question could not be accepted.

9. At the time of admission, the interim relief granted taking property possession in question.

Therefore, taking into consideration this event, we would give reasonable time for the petitioners to remove their belongings and to vacate the land in question and for that purpose, we would give them time upto 8th November,1996 and they are not forcibly evacuated till that date.

10. The petition is therefore, dismissed. The interim relief granted earlier is vacated in view of the above discussion.

\* \* \* \* \*